



Office of the Attorney General

State of Texas

December 21, 1995

DAN MORALES

ATTORNEY GENERAL

The Honorable Antonio O. Garza, Jr.
Secretary of State
Executive Division
Office of the Secretary of State of Texas
P.O. Box 12697
Austin, Texas 78711-2697

Letter Opinion No. 95-087

Re: Election of school board trustees by majority vote from single-member districts or by numbered position under Senate Bill 1, Act of May 27, 1995, 74th Leg., R.S., ch. 260, 1995 Tex. Sess. Law Serv. 2207 (ID# 36678)

Dear Mr. Secretary:

You ask about changes in the law relating to the election of school board trustees by majority vote made by Senate Bill 1 as adopted by the Seventy-fourth Legislature in 1995. *See* Act of May 27, 1995, 74th Leg., R.S., ch. 260, 1995 Tex. Sess. Law Serv. 2207. Senate Bill 1 substantively revised titles 1 and 2 of the Education Code. *See* House Public Educ. Comm., Bill Analysis, C.S.S.B. 1, 74th Leg., R.S. (1995).

You ask specifically whether school districts that elected trustees by majority vote from single-member districts under former Education Code section 23.023 may continue to elect trustees by majority vote from single-member districts under Senate Bill 1. *See* Act of May 27, 1995, 74th Leg., R.S., ch. 260, § 58, 1995 Tex. Sess. Law Serv. 2207, 2498 (repealing, among other things, chapters 1 through 31 of Education Code). Former section 23.023 provided that, with certain exceptions, independent school districts with average daily attendance of 64,000 or more students were to be governed by nine trustees, seven of whom were to be elected from single-member districts and two, the board president and vice president, at large. Act of May 25, 1987, 65th Leg., R.S., ch. 852, 1987 Tex. Gen. Laws 2134, *amended by* Act of June 6, 1990, 71st Leg., 6th C.S., ch. 1, § 3.16, 1990 Tex. Gen. Laws 1, 31-32 (repealed 1995). Subsection (e) of former section 23.023 required that all such trustees be elected by majority vote.

Under Senate Bill 1, a new section 11.052 authorizes any independent school district, on the motion of the board or pursuant to voter petition and election, to adopt a system of electing not fewer than seventy percent of its trustees from single-member districts. Act of May 27, 1995, 74th Leg., R.S., ch. 260, § 1, 1995 Tex. Sess. Law Serv. 2207, 2223-24. There is, however, no provision in section 11.052 for electing such trustees by majority vote.¹ *See id.* As you note, section 2.001 of the Election Code

¹Former section 23.024 provided an alternate scheme of election of not fewer than seventy percent of the trustees from single-member districts, without providing for election by majority vote. Section 11.052, as adopted by Senate Bill 1, appears generally to carry forward the former section 23.024

provides that "[e]xcept as otherwise provided by law, to be elected to a public office, a candidate must receive more votes than any other candidate for the office"—that is for election by plurality in the absence of a provision for election by majority.

You suggest that section 11.062 of the code, as adopted by Senate Bill 1, may permit school districts formerly electing trustees by majority vote from single-member districts under former section 23.023 to continue to elect trustees by majority vote from single-member districts. *See id.* at 2226. Section 11.062 provides:

An independent school district in which, before September 1, 1995, part of the trustees were elected from single-member trustee districts and one or more board officers were elected at large shall continue electing trustees in that manner until a different method of selection is adopted by resolution of the board of trustees.

Id.

The words "in that manner" in "continue electing trustees and officers in that manner" in section 11.062 could be read to refer to either the entire election procedure used in the district before September 1, 1995, or only to the election of "part of the trustees . . . from single-member districts and one or more board officers . . . at large" as the district had previously done it. Taken as whole, however, the language of section 11.062 suggests to us a "grandfather" scheme under which districts to which it applies may "continue" electing trustees as previously until such time as the board adopts a different method. Given this overall tenor of the language of the section, we believe that if the legislature had intended to limit the scope of this "grandfather-like" language so as to authorize the continued election of trustees from single-member districts and board officers at large as was done in a covered district prior to September 1, 1995, but to disallow the continuance of the majority vote system theretofore used, it would have more clearly indicated that intent. Therefore, in response to your question, it is our opinion that districts operating prior to September 1, 1995 under the provisions of former Education Code section 23.023 for the election, by majority vote, of seven trustees from single-member districts, and two, the board president and vice president, at large shall continue, pursuant to section 11.062 as adopted by Senate Bill 1, to elect members in such fashion by majority vote until a different method is adopted by the board.

(footnote continued)

provisions. We note too that the House version of Senate Bill 1 included a general provision that a board might require that trustees be elected by majority vote. House Public Educ. Comm., Bill Analysis, C.S.S.B. 1, 74th Leg., R.S. at 11 (1995). This provision was not included in the bill as finally adopted. See Conference Committee side-by-side comparison of House, Senate, and Conference versions of S.B. 1, 74th Leg., R.S., at 28 (1995) (located in bill file to S.B. 1).

You also ask:

Do school districts which adopted the system of election by numbered position by majority vote under Old Code section 23.11(h) continue to have authority to require a majority vote after the effective date of Senate Bill 1 pursuant to New Code section 11.058?

Former section 23.11 authorized school districts to elect trustees by numbered position, Act June 2, 1969, 61st Leg., R.S., ch. 889, § 23.11, 1969 Tex. Gen. Laws 2735, 2950-51 (repealed 1995), and provided in subsection (h) that the district board in such a district *might* also by resolution require that election be by majority vote, Act of May 25, 1971, 62d Leg., R.S. ch. 760, § 1, 1971 Tex. Gen. Laws 2410, 2410 (repealed 1995). Senate Bill 1 repealed former section 23.11, Act of May 27, 1995, 74th Leg., R.S., ch. 260, § 58, 1995 Tex. Law Serv. 2207, 2498, but adopted a new section 11.058, *id.* sec. 1, § 11.058, at 2225-26, stating, in subsection (a), that election by numbered position "is or may be required only specified by this section" and further providing in pertinent part:

(b) The positions on the board of trustees shall be designated by number in any independent school district in which the procedure of designating and electing the trustees by number has been authorized and instituted whether under general or special law and whether by resolution of the trustees or by operation of law.

(c) The positions on the board of trustees shall be designated by number in any independent school district in which the board of trustees by resolution orders that all candidates for trustee be voted on and elected separately for positions on the board of trustees and that all candidates be designated on the official ballot according to the number of the positions for which they seek election.

. . . .

(f) Once the board of trustees of an independent school district has ordered the election of trustees by numbered position under this section, neither the board of trustees nor their successors may rescind the action.

Nothing in section 11.058 or elsewhere specifically authorizes numbered position election of trustees by majority vote.² See *id.* Again, Election Code section 2.001 provides that except as otherwise provided, elections shall be by plurality.

²See *supra* note 1.

As your question pertains to districts which had operated under former section 23.11, we understand it to be limited to those districts in which, under subsection (b) of section 11.058, election by numbered position had previously been "authorized and instituted whether under general or special law and whether by resolution of the trustees or by operation of law." Such districts are now *required* under subsection (b) to designate trustee positions by number for election purposes. The question here is thus whether subsection (b), in requiring a district previously electing trustees by numbered position pursuant to former section 23.11 to carry on electing trustees by numbered position, also requires, or permits, a district which had previously adopted a majority vote requirement under subsection (h) of section 23.11, to elect trustees by majority vote now. In our opinion, subsection (b) of section 11.058 does not authorize districts required thereunder to designate board positions by number to elect by majority vote as well, even if they had previously done so pursuant to former section 23.11, subsection (h).

Comparing the language of section 11.058(b), to that in section 11.062—which we found above to authorize a district formerly electing some of its trustees from single-member districts by majority vote to continue to elect its trustees in such manner—we are of the opinion that, although it is perhaps a matter of nuance, the language in subsection (b) is narrower. Subsection (b) does not use language such as "shall continue electing trustees and officers in that manner" which as used in section 11.062 indicated to us an intent to "grandfather" in the entire election scheme previously used in those districts previously electing some trustees from single-member districts. Rather, subsection (b) states that "[t]he positions on the board of trustees shall be designated by number" in any district in which "electing the trustees by number has been authorized and instituted under general or special law." This language, in our opinion, operates only to require that such districts elect trustees by numbered position; it does not speak to a majority vote requirement and neither does anything else in the section. (Again, subsection (a) of section 11.058 provides that "[t]he designation of trustees by number is or may be required *only as specified by this section.*" [Emphasis added.]) We conclude that there is no provision relative to districts electing trustees by numbered position under section 11.058(b) which removes such elections from the plurality vote requirement of Election Code section 2.001.

S U M M A R Y

School districts operating prior to September 1, 1995, under the provisions of former Education Code section 23.023 for the election, by majority vote, of seven school board trustees from single-member districts, and two, the board president and vice president, at large, shall continue, pursuant to Education Code section 11.062 as adopted by the Seventy-fourth Legislature's Senate Bill 1, to elect members in such fashion by majority vote until a different method is adopted by the board.

There is no provision relative to districts electing trustees by numbered position under Education Code section 11.058(b), as adopted by Senate Bill 1, which removes such elections from the plurality vote requirement of Election Code section 2.001.

Yours very truly,

A handwritten signature in black ink, appearing to read "William Walker", with a long horizontal flourish extending to the right.

William Walker
Assistant Attorney General
Opinion Committee